

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-7299

No. 76-7299

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MISS MAE M SMITH a/k/a MISS MARY M SMITH

Plaintiff - Appellant

v

MR FRED BARONS, FBI AGENT, et al.,

Defendants - Appellees

On Appeal from the United States District
Court for the Eastern District of New York

BRIEF FOR APPELLEE

OSCAR G RUBIN

Defendant In Person

233 Broadway

New York, NY 10007

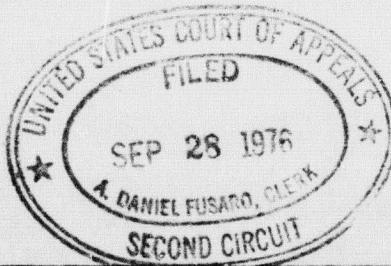


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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-7299

MISS MAE M SMITH a/k/a MISS MARY M SMITH

Plaintiff-Appellant

v

MR. FRED BARONS, FBI Agent, et al.,

Defendants-Appellees

On appeal from the United States
District Court for the Eastern
District of New York

BRIEF FOR APPELLEE

STATEMENT OF THE ISSUE

1. Whether the District Court correctly held that the Complaint
be dismissed.

STATEMENT OF THE CASE

This case is before the Court upon the appeal by Miss Smith
from an order entered by the United States District Court for
the Eastern District of New York, per Judge Mark A. Constantino,
dismissing her complaint with prejudice.

THE FACTS

Plaintiff has instituted an action alleging at most defamation which allegedly occurred about eighteen years ago. The Defendant has denied all the allegations contained in her complaint.

PROCEEDINGS IN THE DISTRICT COURT

Plaintiff instituted an action in the District Court against many defendants. Motion made to dismiss the complaint were granted by order of the District Court dated March 4th 1976 on the ground that the complaint grossly violated Rule 8 FRCP. The Court permitted the plaintiff to replead which she did. Motion were made to dismiss the repleading and by order of Hon. Mark A. Constantino, the motion of each defendant was granted dismissing the complaint with prejudice since it violated Rule 8 (e) (1) FRCP.

ARGUMENT PRELIMINARY STATEMENT

1. The complaint violates Federal Rules of Civil Procedure 8(e) (1) which states that each averment of a pleading shall be simple, concise and direct.
2. The Court lacks jurisdiction of the subject matter because plaintiff and defendants or some of them are residents of New York and this action cannot be grounded upon diversity of citizenship as provided in 28 U S C Sec 1332. Further, since there is no substantial federal question involved, subject matter jurisdiction is lacking under 28 U S C Sec 1331.
3. The cause of action, if any, in defamation is barred by the Statute of Limitations under the State statute of limitations CPLR Sec 215 (3) inasmuch as the alleged defamation is supposed to have occurred eighteen years ago.

CONCLUSION

IT is respectfully submitted that the order of the District Court on review be affirmed.

OSCAR G. RUBIN
Defendant in Person
233 Broadway
New York City

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

* - - - - - X

76-7297

Miae Mae M Smith etc.,

Plaintiff,

-against-

MR Fred Barons, et al.,

Defendants.

- - - - - X

State of New York

County of New York) SS

Annette Rubin being duly sworn deposes and
says;

Deponent is not a party to the action, is over the age of 18 years, resides at 676 Boelsen Dr. Westbury, New York. That on the 28 day of September 1976 deponent served the within Brief on Miss Mae M Smith the plaintiff in this action at 83-06 Vietor Avenue c/o Coleman Family, Elmhurst, NY 11373 the address designated by said plaintiff for that purpose by depositing same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the U S Post Office Dept in the State of New York.

Sworn to before me this

28 day of Sept 1976

Oscar G. Rubin

Annette Rubin

OSCAR G. RUBIN
NOTARY PUBLIC, State of New York
No. 30-8694750
Qualified in Nassau County
Term Expires March 30, 1980 78